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| 10/612,154      | 07/03/2003  | Anna-Carin Elfstrom  | 018798-171          | 4120             |

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| EXAMINER |
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HAND, MELANIE JO

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| ART UNIT | PAPER NUMBER |
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3761

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10/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/612,154 | <b>Applicant(s)</b><br>ELFSTROM ET AL. |  |
|                              | <b>Examiner</b><br>MELANIE J. HAND   | <b>Art Unit</b><br>3761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 26-28 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 6-25, 29, 30, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/14/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed April 14, 2008 have been fully considered but they are not persuasive. Applicant argues that the instant application and the Hermansson reference are commonly owned or subject to obligation of assignment to the same assignee. This is not sufficient to overcome the outstanding claim rejections under 35 U.S.C. 103 as the statement of common ownership under 35 U.S.C. 103(c)(1) must indicate that the common ownership or obligation of assignment is in place "at the time the invention was made". Applicant has not stated this in the Remarks. As there are no additional arguments as to the merits of the outstanding claims rejections, all outstanding claim rejections are maintained herein.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on April 14, 2008 was filed after the mailing date of the non-final action on February 5, 2008. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-5, 26-28 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermansson et al (U.S. Patent Application Publication No. 2003/0125690)

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

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With respect to **claim 1**: Hermansson teaches an absorbent product for men, comprising a front section 11, a rear section 8, and a crotch section 12 between the front and rear sections 11,8, an absorption body in the form of absorption element 5 which tapers towards one end from a front section 11 of the product towards the crotch section 12 of the product and which is enclosed in a sheath comprising a liquid-tight layer in the form of liquid-impermeable outer layer 3 on a side of the absorption body facing away from the user during use and a liquid-permeable layer in the form of inner layer 4 on an opposite side of the absorption body 5, both of which layers extend beyond the absorption body and are mutually joined together, as can be seen in Fig. 4. The absorption body 5 is arranged to extend, during product usage, from the front section 11 of the product in the direction of the crotch section 12 (Fig. 3) and is adapted to extend with its narrower end section to slightly below the penis of the user.

Hermansson does not teach that a liquid barrier is applied on the liquid-permeable layer, at the narrower end section of the absorption body that is arranged to prevent urine emitted by the user from leaking from the surface of the absorption body towards the crotch region of the user. However, absorbent articles suitable for or intended for use by men having moisture barriers on the inside of the article are known in the art as supported by Erspamer, Roslanksy and Lipner and provided leakage protection in conjunction with an absorbent element. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Hermansson so as to contain a liquid barrier applied on the liquid permeable barrier (i.e. on the inside of the article) with a reasonable expectation of success to provide further leakage protection in addition the instant absorption body.

With respect to **claim 2**: The absorbent product of Hermansson is considered herein to be an insert adapted for use with underpants inasmuch as underpants can be worn on the outside of

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the article. The absorbent product is provided with one or more fastening members in the form of hook means on an outer side of the liquid-tight layer 3. The fastening members connect the side edges of the rear section 8 so as to be in use configuration around the torso of the wearer and are thus considered herein to be adapted to hold the absorbent product in place inside the underpants.

With respect to **claim 3**: The product as a whole has a pants shape. The front section 11 and the rear section 8 are adapted to surround a waist of the user, and the rear section 8 is provided with waist elastic (e.g. first elastic piece 301) which is adapted to hold the absorbent product in place on the user.

With respect to **claim 4**: The front section 11 has at least one elastic member in the form of leg elastics 323,324, which, during product usage, necessarily enables the front section 11 of the product to be pulled down, counter to the action of the elastic member, to a position in which an upper limit edge of the front section in the middle region of the front section is situated below the penis of the user, at the same time as the upper limit edge of the front section 11 in the two outer edge regions of the front section is arranged to be held in place around the waist of the user by virtue of fastening means connecting second piece 2 defining the front section to first piece 1 defining the waist-surrounding section. The absorption body is configured with one or more deformation zones defined by the areas directly adjacent the leg elastics 323,324, which enable those parts of the absorption body which, during product usage, are situated above and over the penis of the user to be drawn down together with the rest of the front section 11 when the front section of the product is pulled down, and the front section of the product and the

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absorption body are necessarily arranged to be returned by the elastic member to their original usage position due to the presence of the elastic member.

With respect to **claim 5**: The waist elastic is formed from an elastic first piece 1 having waist elastic 301 therein which, in the extended state, is essentially rectangular and which is adapted to partially surround the trunk of the user and form the rear section and side sections of the pants product. A second piece 2, incorporated in the product, is configured to form the front section 11 and crotch section 12 of the pants product. The second piece 2 is elongated with two opposing end edges and two opposing longitudinal edges. The width of the second piece 2, at least at the crotch section 12, is less than the length of the first piece 1. The second piece 2 with its longitudinal direction is arranged perpendicularly to the longitudinal direction of the first piece 1 and is connected by a first end section to the one longitudinal edge section of the first piece 1 and centrally on said first piece. The one end section of the first piece 1 is connected to a first side edge section of the second piece 2, and the second end section of the first piece 1 is correspondingly connected to a second side edge section of the second piece 2, and the absorption body 5 is applied, in its entirety, on the second piece 2.

With respect to **claim 26**: Hermansson teaches an absorbent product for men, comprising a front section 11, a rear section 8, and a crotch section 12 between the front and rear sections 11,8, an absorption body in the form of absorption element 5 which tapers from a wide end at the front section 11 of the product towards a narrow end at the crotch section 12 of the product and which is enclosed in a sheath comprising a liquid-tight layer in the form of liquid-impermeable outer layer 3 on a side of the absorption body facing away from the user during use and a liquid-permeable layer in the form of inner layer 4 on an opposite side of the

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absorption body 5, both of which layers extend beyond the absorption body and are mutually joined together, as can be seen in Fig. 4. The absorption body 5 is arranged to extend, during product usage, from the front section 11 of the product in the direction of the crotch section 12 (Fig. 3) and is adapted to extend with its narrower end section to slightly below the penis of the user.

Hermansson does not teach that a liquid barrier is applied on the liquid-permeable layer, at the narrower end section of the absorption body that is arranged to prevent urine emitted by the user from leaking from the surface of the absorption body towards the crotch region of the user. However, absorbent articles suitable for or intended for use by men having moisture barriers on the inside of the article are known in the art as supported by Erspamer, Roslanksy and Lipner and provided leakage protection in conjunction with an absorbent element. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Hermansson so as to contain a liquid barrier applied on the liquid permeable barrier (i.e. on the inside of the article) with a reasonable expectation of success to provide further leakage protection in addition the instant absorption body.

With respect to **claim 27**: The absorbent product of Hermansson is considered herein to be an insert adapted for use with underpants inasmuch as underpants can be worn on the outside of the article. The absorbent product is provided with one or more fastening members in the form of hook means on an outer side of the liquid-tight layer 3. The fastening members connect the side edges of the rear section 8 so as to be in use configuration around the torso of the wearer and are thus considered herein to be adapted to hold the absorbent product in place inside the underpants.

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With respect to **claim 28**: The product as a whole has a pants shape. The front section 11 and the rear section 8 are adapted to surround a waist of the user, and the rear section 8 is provided with waist elastic (e.g. first elastic piece 301) which is adapted to hold the absorbent product in place on the user.

With respect to **claim 31**: The product as a whole has a pants shape. The front section 11 and the rear section 8 are adapted to surround a waist of the user, and the rear section 8 is provided with waist elastic (e.g. first elastic piece 301) which is adapted to hold the absorbent product in place on the user.

With respect to **claim 32**: The liquid barrier known in the art and fairly suggested by Hermansson is a separate piece from the instant absorption body.

With respect to **claim 33**: The liquid barrier known in the art and fairly suggested by Hermansson is a separate piece from the instant absorption body.

With respect to **claim 34**: Hermansson teaches an absorbent product for men, comprising a front section 11, a rear section 8, and a crotch section 12 between the front and rear sections 11,8, an absorption body in the form of absorption element 5 which tapers from a wide end at the front section 11 of the product towards a narrow end at the crotch section 12 of the product and which is enclosed in a sheath comprising a liquid-tight layer in the form of liquid-impermeable outer layer 3 on a side of the absorption body facing away from the user during use and a liquid-permeable layer in the form of inner layer 4 on an opposite side of the absorption body 5, both of which layers extend beyond the absorption body and are mutually

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joined together, as can be seen in Fig. 4. The absorption body 5 is arranged to extend, during product usage, from the front section 11 of the product in the direction of the crotch section 12 (Fig. 3) and is adapted to extend with its narrower end section to slightly below the penis of the user.

Hermansson does not teach that a liquid barrier is applied either between the liquid-tight layer 3 and the liquid –permeable layer 4 or on the liquid-permeable layer, at the narrower end section of the absorption body that is arranged to prevent urine emitted by the user from leaking from the surface of the absorption body towards the crotch region of the user. However, absorbent articles suitable for or intended for use by men having moisture barriers on the inside of the article are known in the art as supported by Erspamer, Roslanksy and Lipner and provided leakage protection in conjunction with an absorbent element. Therefore it would be obvious to one of ordinary skill in the art to modify the article of Hermansson so as to contain a liquid barrier applied on the liquid permeable barrier (i.e. on the inside of the article) with a reasonable expectation of success to provide further leakage protection in addition the instant absorption body.

### ***Allowable Subject Matter***

6. Claims 6-25, 29, 30, 35 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/

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Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761